



INTERIOR BOARD OF INDIAN APPEALS

Albert Creek Pawnee and Margaret Blackowl Pawnee
v. Acting Anadarko Area Director, Bureau of Indian Affairs

32 IBIA 273 (07/20/1998)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ALBERT CREEK PAWNEE and	:	Order Affirming Decision
MARGARET BLACKOWL PAWNEE,	:	
Appellants	:	
	:	
v.	:	Docket Nos. IBIA 98-69-A
	:	IBIA 98-70-A
ACTING ANADARKO AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	July 20, 1998

Appellants Albert Creek Pawnee and Margaret Blackowl Pawnee seek review of a January 23, 1998, decision of the Acting Anadarko Area Director, Bureau of Indian Affairs (Area Director; BIA), declining to issue patents in fee for Appellants' respective interests in the mineral rights on or underlying the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of sec. 12, T. 14 N., R. 11 W., Indian Meridian, Blaine County, Oklahoma, containing 40 acres more or less. The land is part of the original allotment of All Killer, deceased Cheyenne-Arapaho Allottee No. 1269. Appellants, who are mother and son, each own an undivided $\frac{1}{2}$ interest in the mineral rights. For the reasons discussed below, the Board of Indian Appeals (Board) affirms the Area Director's decision.

The Area Director stated at pages 1-2 of his Decision:

Margaret is 64 years of age, unmarried and unemployed, and relies upon the subject trust income and a small Veterans Administration allotment for her subsistence. Albert is 21 years of age, has a high school education, is married and has three children. For the past seven months he has been employed * * * as a laborer. Albert, his wife and two children, reside on property jointly owned and also occupied by his mother. In August 1994 upon his reaching age of majority his minor's account * * * was released to him in lump sum. Subsequently, he and his mother receive oil and gas royalty income averaging approximately * * * a month (computed on 1997 receipts) for sales derived from the subject tract. Other interests owned by either party do not produce significant income. The subject tract represents their only stable income, providing proceeds for their basic needs.

On February 12, 1996 a fee simple patent was issued to [each of Appellants for their respective $\frac{1}{2}$ interests] in the surface and surface rights only [of the same tract]. Subsequently, Blaine County records reflect warranty deeds of record executed by [Appellants] to third parties with documentary stamps affixed in an amount to disclose the consideration received by [Appellants] was less than a prudent seller would negotiate. Also, appellants indicate they have not received the full negotiated consideration.

We believe approval of this transaction will jeopardize the appellants only stable source of income to meet their basic needs, and that the appellants have not displayed they possess sufficient ability, knowledge, experience, and judgement to enable them to manage their business affairs, including the administration, use, investment, and disposition of any property turned over to them and the income or proceeds therefrom, with such reasonable degree of prudence and wisdom as will be apt to prevent them from losing same or the benefits thereof. Therefore, based upon the record as shown it is my discretionary opinion that we have no alternative but to sustain the Superintendent's decision as rendered.

Appellants filed separate appeals from this decision. Although advised of their right to do so, neither Albert nor Margaret filed an opening brief. Therefore, all of their arguments are contained in their Notices of Appeal.

Decisions concerning whether or not to approve the issuance of fee patents for trust or restricted lands are committed to BIA's discretion. See 25 C.F.R. § 152.5(a) ("An application may be approved and fee patent issued if the Secretary, in his discretion, determines that the applicant is competent"); Oglala Sioux Tribe v. Commissioner of Indian Affairs, 7 IBIA 188, 206, 86 I.D. 425, 433-34 (1979), aff'd, 540 F. Supp. 503 (D.S.D. 1982), aff'd, 708 F.2d 326 (8th Cir. 1983). Cf. Marvin v. Sacramento Area Director, 32 IBIA 64 (1998), Noriega v. Acting Anadarko Area Director, 27 IBIA 157 (1995) (discretionary nature of decisions as to whether or not to approve mortgages of trust lands). The Board's role in reviewing BIA discretionary decisions is limited. The Board does not substitute its judgment for BIA's, but instead reviews the BIA decision to ensure that all legal prerequisites to the exercise of discretion are followed.

Albert argues that the Area Director was incorrect about the amount of money he received when he reached majority. Even using Albert's lower figure for the amount of money he received, Albert received a substantial lump sum. For purposes of this decision, the relevant factors are that he received this money, and has not argued that the money, or part of it, is still available to him.

Albert also disputes the Area Director's statement regarding the amount of monthly income received from the mineral rights. It appears that Albert has misread the Area Director's statement. The Board understands the statement to refer to the amount of monthly income received by both Margaret and Albert, not by Albert alone. However, the fact that Albert may not receive a substantial amount each month from his mineral rights does not show that the Area Director erred in concluding that that monthly payment was his only stable source of income.

Both Appellants provide information as to how they would use the money received from sales of their mineral rights. This information suggests a belief that the Area Director exercised his discretion improperly because of the worthiness of the ways in which they intend to use the sale proceeds.

The BIA's trust responsibility is to Appellants as the owners of trust lands. Although the result may appear harsh to Appellants, BIA's first duty

is to ensure that their futures are not jeopardized. Other than Albert's disagreement with the amounts mentioned by the Area Director and discussed above, Appellants have not disputed the Area Director's recitation of facts, including the assertion that Albert and Margaret each sold former trust lands at less than a prudent price, that they each have no stable source of income other than the mineral rights at issue here, and that apparently no part of the lump sum Albert received when he reached majority is still available to him. Under these circumstances, the Board finds that the Area Director had an adequate basis to decline to approve Appellants' requests for patents in fee.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Acting Anadarko Area Director's January 23, 1998, decision is affirmed.

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Kathryn A. Lynn
Chief Administrative Judge

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Anita Vogt
Administrative Judge